

104 CMR 32.00: INVESTIGATION AND REPORTING RESPONSIBILITIES

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32.01: Scope, Authority and Purpose

- (1) Scope.
 - (a) 104 CMR 32.00 applies to all programs and facilities licensed, contracted for, or operated by the Department.
 - (b) Any decision made pursuant to 104 CMR 32.00 shall be consistent with bargaining agreements, civil service law and other provisions of labor law then in effect.
 - (c) 104 CMR 32.00 does not provide for an adjudicatory hearing within the meaning of M.G.L. c. 30A, § 1(1). 104 CMR 32.00 is not intended to provide an administrative remedy under the doctrine of exhaustion of administrative remedies or otherwise.
- (2) Authority. 104 CMR 32.00 is adopted by the Department pursuant to M.G.L. c. 19, § 1 and M.G.L. c. 123, § 2.
- (3) Purpose. The purpose of 104 CMR 32.00 is to establish a framework for the swift resolution of certain complaints and the reporting, investigation and resolution of certain other complaints which are of a very serious nature or which have broad implications for persons receiving mental health services within the Commonwealth.

32.02: Definitions

For purposes of 104 CMR 32.00, the following terms shall have the following meanings:

Assistant Commissioner means Assistant Commissioner for Child and Adolescent or Forensic Services with responsibility for Department-operated or contracted for programs or facilities.

Client means a person who is alleged to have been subjected to an incident or condition that is dangerous, illegal, or inhumane and who is receiving services from the Department or a program or facility licensed, contracted for, or operated by the Department at the time of the alleged incident or condition or who received such services no more than 30 days prior to the alleged incident or condition.

Complainant means any person who files a complaint under 104 CMR 32.00.

Complaint means an allegation communicated to an employee or Person in Charge about an incident or condition which meets the criteria set forth in 104 CMR 32.00, regardless of whether the allegation is also required to be reported to any other entity pursuant to law or policy.

Dangerous means poses or posed a danger or the potential of danger to the health or safety of a client.

Day means Monday through Friday excluding any legal holiday observed by the state.

Deputy Commissioner means Deputy Commissioner for Program Operations.

Director of Licensing means the person responsible for the Department's licensing activities.

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Employee means an individual working at a program or facility subject to 104 CMR 32.00.

Form means an official complaint or appeal form which has been approved by the Commissioner.

Human Rights Committee means a committee which is established to protect the rights of clients at a program or facility.

Human Rights Officer means the person designated as the Human Rights Officer for a program or facility.

Illegal means a violation of state or federal statute, regulation, court decision or other law.

Inhumane means without regard for client dignity.

Medicolegal death means:

- (a) any death required by M.G.L. c. 38, § 3, to be reported to the Medical Examiner;
- (b) a death in which the Medical Examiner takes jurisdiction.

Office of Investigations means the office within the Department responsible for conducting certain investigations under 104 CMR 32.00.

Party means:

- (a) the complainant;
- (b) a client, if the complaint is filed on behalf of the client;
- (c) any person complained of or found to be responsible for any incident or condition subject to review under 104 CMR 32.00;
- (d) the legally authorized representative of the complainant or the person complained of, if any;
- (e) the Person in Charge of the involved program or facility;
- (f) the Human Rights Officer of the involved program or facility;
- (g) the Human Rights Committee of the involved program or facility, if it files the original complaint or files a notice to intervene with the Person in Charge;
- (h) in the event of a client death, administrator, administratrix, executor, executrix, if any, or the next of kin.

Person in Charge means the person having the day-to-day responsibility for the management and operation of the program or facility subject to 104 CMR 32.00, or his or her designee.

32.03: Complaint and Appeal Process

(1) Any person may make a complaint regarding any incident or condition which he or she believes to be dangerous, illegal, or inhumane to the Person in Charge or to an employee, who shall forward the complaint to the Person in Charge.

(2) In accordance with 104 CMR 32.05(2), the Person in Charge shall determine how to proceed.

(3) A complaint referred to the Department's Central Office pursuant to 104 CMR 32.05 shall be sent to the Office of Investigations if it involves a Department-operated or contracted for program or facility, and to the Director of Licensing if it involves a program that is licensed but not contracted for by the Department.

(4) The complaint shall be investigated and a decision shall be given to the parties:

- (a) by the Person in Charge within ten days of receipt of the complaint; or
- (b) when referred to the Department's Central Office, by the Area Director, Assistant Commissioner, or Director of Licensing, no later than 40 days after receipt of the complaint, or such later date as is permitted by extension.

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The decision under 104 CMR 32.03(4)(a) or (b) shall notify the parties of the right to request reconsideration pursuant to 104 CMR 32.03(5) and shall notify the client of his or her right to appeal the decision pursuant to 104 CMR 32.03(6) and with whom the appeal must be filed.

(5) Reconsideration. Any party to the complaint has the right to request reconsideration of the decision by the person who issued the decision. Reconsideration is not a prerequisite to a client's filing of an appeal.

- (a) The party must request reconsideration in writing within ten days of receipt of the decision;
- (b) The request must, with specificity, assert the failure to interview an essential witness or the failure to consider an important fact or factor;
- (c) The final decision shall issue within ten days of receipt of the request for reconsideration.

(6) Appeal. A client or an individual or entity acting on behalf of a client or a client's estate has the following appeal rights. All appeals must be in writing within ten days of receipt of the applicable decision.

(a) Appeal from Decision after Investigation by the Person in Charge.

- 1. The client or an individual or entity acting on behalf of a client or a client's estate may appeal to the respective Area Director or Assistant Commissioner, if the complaint involves a Department-operated or contracted program or facility, or to the Director of Licensing, if the complaint involves a program or facility licensed but not contracted for by the Department. The decision on appeal shall be given to the parties within 30 days from the receipt of the appeal, unless further fact-finding is required, in which case the decision shall issue within 40 days.
- 2. The client or an individual or entity acting on behalf of a client may further appeal the decision of the Area Director or Assistant Commissioner to the Deputy Commissioner, who shall issue a decision within 30 days from the receipt of the appeal and whose decision shall be final.
- 3. The client or an individual or entity acting on behalf of a client may further appeal the decision of the Director of Licensing to the Commissioner, who shall issue a decision within 30 days and whose decision shall be final.

(b) Appeal from Decision after Investigation by the Office of Investigations or the Director of Licensing.

- 1. If the Person in Charge, Area Director, or Assistant Commissioner issued a decision after an investigation by the Office of Investigations, the client or an individual or entity acting on behalf of a client may appeal to the Deputy Commissioner, who shall issue a decision within 30 days from the receipt of the appeal.
- 2. The client or an individual or entity acting on behalf of a client may further appeal the Deputy Commissioner's decision to the Commissioner, who shall issue a decision within 30 days from the receipt of the appeal and whose decision shall be final.
- 3. If the Director of Licensing issued a decision after an investigation by the Office of Investigations or after his or her own investigation, the client or an individual or entity acting on behalf of a client may appeal the Director of Licensing's decision to the Commissioner, who shall issue a decision within 30 days from the receipt of the appeal and whose decision shall be final.

(7) No Retaliation. There shall be no retaliation against any individual who files a complaint pursuant to 104 CMR 32.00.

32.04: Requirements for All Fact-Finding Activities

- (1) At a minimum, any fact-finding activity relative to a complaint must include the following:
 - (a) interviews with the complainant, the client, if the client is not the complainant, and each individual complained of;
 - (b) interviews with each witness and other individuals, including family members, who may have information related to the complaint. A good faith effort to interview each witness and other individuals who may have information will satisfy this requirement;

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- (c) review of all incident reports and other records related to the complaint including, but not limited to, the client's medical record if applicable. Records which are part of a peer review process under M.G.L. c.111, § 204 are exempt from this review.
- (2) The complainant must be interviewed before any other interviews take place.
- (3) Clients who are to be interviewed shall be permitted to have a representative or a Human Rights Officer present.
- (4) Employees who are to be interviewed shall be permitted to have a representative present.

32.05: Responsibilities of Individuals in the Investigation and Reporting Process

- (1) Employee.
 - (a) If an employee is notified or becomes aware of a client's complaint, the employee shall provide the client with a complaint form and shall assist the client in completing this form if requested to do so.
 - (b) The completed complaint form shall be immediately filed by the employee with the Person in Charge.
 - (c) An employee who becomes aware of any condition or incident which he or she has reason to believe is dangerous, illegal or inhumane shall immediately complete a complaint form and give it to the Person in Charge or shall verbally notify the Person in Charge, who shall complete a complaint form.
- (2) Person in Charge.
 - (a) The Person in Charge shall ensure that notice of the availability and general provisions of 104 CMR 32.00 is conspicuously posted at the program or facility and is provided upon admission to each client and legally authorized representative, if any.
 - (b) The Person in Charge shall ensure that copies of complaint and appeal forms are available at well identified locations and are provided to individuals upon request.
 - (c) Upon receipt of a complaint, or at any time the Person in Charge becomes aware of any condition or incident which he or she believes to be dangerous, illegal or inhumane, he or she shall:
 - 1. Undertake any necessary fact-finding;
 - 2. Give a written decision to the parties within ten days containing findings of fact and conclusions and any actions to be taken. The decision shall also notify the parties of the right to request reconsideration. The Person in Charge will have ten days from receipt of the request for reconsideration to consider the request, conduct any additional fact-finding, reaffirm or amend his or her initial decision, and issue a final decision. The written decision shall also notify the client of his or her right to appeal to the Department's Central Office and to whom it should be appealed; or
 - (d) If the Person in Charge has reason to believe that the event comes under one of the following categories:
 - 1. medicolegal death ;
 - 2. sexual assault or abuse;
 - 3. physical assault or abuse;
 - 4. attempted suicide which results in serious physical injury;
 - 5. a felony has been committed;
 - 6. restraint or seclusion practices not in accordance with Department regulations which result in serious physical injuries; or
 - 7. if the Person in Charge believes that the complaint is sufficiently serious or complicated as to require an investigation by the Office of Investigation even though it does not involve one of the categories listed at 104 CMR 32.05(2)(d)1. through 6;
 he or she shall notify the complainant, if any, and the Human Rights Officer that he or she will forward the complaint to the Department's Central Office. In the case of a program or facility operated or contracted for by the Department, the report will be forwarded to the Office of Investigations which will be responsible for follow-up as set forth in 104 CMR 32.05(4). In the case of a licensed program or facility not under contract with the Department, the complaint will be forwarded to the Director of Licensing who will coordinate investigatory activity with the Office of Investigations.

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(e) Maintain a file containing each complaint referenced in 104 CMR 32.03 to demonstrate compliance with 104 CMR 32.04(1) and provide this file to the Office of Investigations or Director of Licensing upon request.

(f) File a written report monthly with the Commissioner or designee on a form provided by the Department giving the numbers and the types of complaints reported under 104 CMR 32.03 and provide such information as is determined necessary to maintain the public log pursuant to 104 CMR 32.08(3).

(g) If the Person in Charge concludes at any time during the course of the investigation that immediate action is necessary to protect the health, safety, or welfare of a person, he or she shall take steps to ensure that immediate action is taken and shall document the action taken.

(3) Human Rights Officer.

(a) The Human Rights Officer shall assist clients as necessary in filing complaints.

(b) The Human Rights Officer shall use best efforts to see that an incapable client is represented by an independent attorney or advocate, if necessary or appropriate, to ensure that the client's interests are protected.

(4) Office of Investigations.

(a) Whenever a complaint is forwarded to the Office of Investigations pursuant to 104 CMR 32.05(2)(d), the Office will have two days to complete the following:

1. Log in each complaint received under 104 CMR 32.05(2)(d), open a case file, and assign a reference number to it.

2. Determine and document whether or not some other entity has jurisdiction to conduct an investigation and whether that entity is aware of the incident or condition complained of and is undertaking an investigation.

3. If another entity is undertaking an investigation, determine and document whether the Department shall defer investigating the matter to that entity or undertake investigation on the other entity's behalf or whether it would be in the best interest of the Department to also undertake a Department investigation.

4. For complaints which have been referred to the Office under 104 CMR 32.05(2)(d)7, determine whether or not to proceed to investigate the complaint. If the Office does not believe that a Department investigation is necessary or appropriate, the complaint will be referred back to the Person in Charge for investigation pursuant to 104 CMR 32.00.

5. If the office will be undertaking an investigation, assign an investigator.

(b) The Office of Investigations will give a written status report to the Person in Charge, the complainant, the Human Rights Officer and the Area Director, Assistant Commissioner, or Director of Licensing, as applicable, within ten days of the receipt of the complaint.

(5) Investigator.

(a) The investigator will have 30 days from the assignment of the investigation in which to conduct an investigation and to file written findings of fact and conclusions with the Area Director, Assistant Commissioner or Director of Licensing, as applicable, containing his or her findings of fact and conclusions.

(b) The investigator may make a written request for an extension beyond 30 days to the Director of Investigations who may grant such an extension for good cause, which shall be documented.

(c) If such an extension is granted, it will be the investigator's responsibility to give written notice of the revised due date to the parties and the Area Director, Assistant Commissioner, or Director of Licensing.

(6) Area Director, Assistant Commissioner, and Director of Licensing.

(a) Appeals from Decisions Made by Persons in Charge.

1. If a client or an individual or entity acting on behalf of a client appeals and the Area Director, Assistant Commissioner, or Director of Licensing determines that no further fact finding is necessary, he or she shall, within 30 days:

a. Affirm the decision or, if not supported by the facts, modify or reverse the decision in writing and send it to the parties. The decision shall include actions, if any, to be carried out by the Person in Charge; and

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- b. Notify the client of his or her right to further appeal this decision within ten days to the Deputy Commissioner for Program Operations, or, in the case of a client receiving services at a licensed program or facility not under contract with the Department, to the Commissioner.
- 2. If a client or an individual or entity acting on behalf of a client appeals and the Area Director, Assistant Commissioner or Director of Licensing determines that further fact finding is necessary, he or she shall within ten days:
 - a. Refer the matter to the Office of Investigations for further fact finding. The investigator shall have 20 days in which to conduct an investigation and file written findings of fact and conclusions.
 - b. Within ten days of the receipt of the investigator's findings of fact and conclusions, issue a written decision letter to the parties which shall include actions, if any, to be carried out by the Person in Charge.
 - c. Notify the client or an individual or entity acting on behalf of a client of his or her right to appeal this decision to the Deputy Commissioner or, in the case of a client receiving services at a licensed program or facility not under contract with the Department, to the Commissioner.
- (b) Decisions on Investigations Conducted Pursuant to 104 CMR 32.05(2)(d). Within ten days of the receipt of the investigator's findings of fact and conclusions, issue a written decision to the parties, which shall include actions, if any, and who is responsible for carrying out such actions. The decision letter shall notify the parties of the right to request reconsideration. The Area Director, Assistant Commissioner, or Director of Licensing will have ten days from receipt of the request for reconsideration to reconsider the decision and issue his or her final decision to the parties. This written decision shall notify the client of his or her right to appeal this decision to the Deputy Commissioner for Program Operations or, in the case of a client receiving services at a licensed facility or program not under contract with the Department, to the Commissioner.
- (7) Deputy Commissioner.
 - (a) The Deputy Commissioner shall review an appeal and issue a decision.
 - 1. The decision shall affirm, modify, or reject the decision being appealed.
 - 2. The decision must issue within 30 days of receipt of the appeal.
 - (b) In the case of an appeal from a decision of a Person in Charge, the Deputy Commissioner's decision shall be final.
 - (c) In the case of an appeal from a decision of an Area Director, Assistant Commissioner, or the Director of Licensing, the Deputy Commissioner's decision shall notify the client of his or her right to appeal to the Commissioner.
- (8) Commissioner. The Commissioner shall review an appeal and issue a decision within 30 days of receipt of the appeal.

32.06: Additional Reporting Requirements

In addition to the reporting requirements contained in 104 CMR 32.00, any person who is mandated to make a report must also fulfill the following statutory reporting responsibilities as applicable:

- (1) M.G.L. c. 19, § 10, Reports of Felonies Committed by or Upon Persons Under Care of the Department.
- (2) M.G.L. c. 19A, § 15, Abuse of Elderly Persons.
- (3) M.G.L. c. 19C, The Disabled Persons Protection Commission.
- (4) M.G.L. c. 38, § 3, Persons Having Knowledge of a Death to Notify Medical Examiner.
- (5) M.G.L. c. 119, § 51A, Persons Required to Report Cases of Injured, Abuse or Neglected Children.

32.07: Monitoring Responsibilities

- (1) Each Area Office will monitor area based Department operated and contracted for programs, services, and facilities in its area to ensure compliance with 104 CMR 32.00.
- (2) The Division of Child and Adolescent Services will monitor statewide child and adolescent services and programs to ensure compliance with 104 CMR 32.00.
- (3) The Division of Forensic Mental Health will monitor statewide forensic mental health services to ensure compliance with 104 CMR 32.00.
- (4) As part of its licensing activity, the Department's Licensing Office will monitor licensed programs and facilities not under contract with the Department to ensure compliance with 104 CMR 32.00.
- (5) The Director of the Office of Investigations will keep statistical data relative to complaints and investigations and will prepare reports on a regular basis for the Commissioner.
- (6) The Deputy Commissioner for Program Operations will receive reports on a regular basis from the Area Directors relative to each Area's activities under 104 CMR 32.00.

32.08: Department Case File and Public Log

- (1) Department Case File. A file, known as the Department case file, shall be kept for each complaint and appeal received by the Department or its contracted programs or facilities. The contents of the file shall include but not be limited to the complaint, the investigator's report, the decision letter, any requests for reconsideration, any appeals, and any decisions on appeals. Each complaint and appeal will be assigned a public log number which will be referenced in the case file.
- (2) Confidentiality.
 - (a) The contents of the Department case file are subject to the Massachusetts Public Records Law, including all the statutory exemptions to disclosure.
 - (b) Notwithstanding 104 CMR 32.08(2)(a):
 1. any person who is mentioned in the Department case file will have access to and may have a copy of that portion of the record in which he or she is mentioned, consistent with the Fair Information Practices Act, M.G.L. c. 66A, § 2.
 2. the client or an individual or entity acting on behalf of a client or in the case of a client death, the administrator, administratrix, executor, executrix of the deceased's estate may receive a copy of the investigator's report.
 3. any other party as defined in 104 CMR 32.02 may receive a copy of the investigator's report upon the signing of a non-disclosure statement, where the report includes client specific information.
- (3) Public Log. The Department shall maintain a public log of all complaints and appeals received by the Department or its contracted for programs or facilities pursuant to 104 CMR 32.00, in such form as the Commissioner may from time to time prescribe. The log shall be kept at the Central Office.
 - (a) The log will not include personal identities and will be a public record, available for inspection and copying by members of the public as provided in M.G.L. c. 66, § 10.
 - (b) The log shall include a statement as to whether the complaint was substantiated, whether any appeals were filed and the outcome of the appealsThe Department shall maintain at the Central Office the written reports filed by the Person in Charge pursuant to 104 CMR 32.05(2)(f).

32.09: Transitional Provision

Complaints that were initiated prior to January 1, 1998, pursuant to the former Department investigation regulations, 104 CMR 24.00, are subject to the procedures, including appeal rights, of 104 CMR 24.00. Complaints initiated on or after January 1, 1998, are subject to 104 CMR 32.00.

REGULATORY AUTHORITY

104 CMR 32.00: M.G.L. c. 19, §§ 1 and 18; c. 123, § 2.